

### REMARKS

Reconsideration of the above referenced application in view of the enclosed amendments and remarks is requested. Claims 1-6 and 8-60 remain pending without amendment. Claim 7 has been amended to correct a minor informality. Claims 1, 16, 31, and 46 are the independent claims.

### ARGUMENT

The Office Action rejects the claims based on 35 U.S.C. § 103(a) and the nonstatutory doctrine of obviousness-type double patenting.

#### Nonstatutory, Obviousness-Type Double Patenting

The Office Action rejects claims 1-12, 16-27, 31-42, and 46-57 under the nonstatutory, judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. patent no. 6,633,963 B1 by Carl M. Ellison et al. (hereinafter “Ellison ‘963”). The Office Action recognizes that the “conflicting” claims are not identical, but it asserts that they are not patentably distinct from each other. Applicants do not admit that the present claims are not patentably distinct from claims 1-44 in Ellison ‘963. However, in order to avoid additional delays and expenses, this response includes a terminal disclaimer under 37 C.F.R. § 1.321(c) to overcome the double patenting rejection.

#### 35 U.S.C. § 103(a)

The Office Action rejects claims 13-15, 28-30, 43-45, and 58-60 under 35 U.S.C. § 103(a) as being unpatentable over Ellison ‘963, in view of U.S. patent no. 6,035,374 to Ramesh Pamwar et al. (hereinafter “Pamwar”). Applicants respectfully traverse those rejections.

Ellison ‘963 was filed on July 18, 2000, and claims priority to U.S. provisional patent application no. 60/198,225 filed on March 31, 2000. The effective filing date for Ellison ‘963 is therefore March 31, 2000.

The effective filing date for the present application is also March 31, 2000. Ellison '963 therefore does not qualify as prior art against the present application. The rejections under 35 U.S.C. § 103(a) are therefore improper.

Information Disclosure Statements

The Office Action also includes copies of certain Information Disclosure Statements (IDSs) that were filed for this application. The copies include initials to indicate that the references have been considered. Applicants appreciate the Examiner's consideration of those references. However, the Office Action did not include a copy of one IDS that was submitted electronically on January 23, 2004, nor did it include a copy of another IDS that was mailed to the USPTO on January 26, 2004. Copies of those two IDSs and associated postcards showing receipt by the PTO are enclosed herewith. Applicants respectfully request confirmation that the references in those two IDSs have been considered.

09/540,611

**CONCLUSION**

In view of the foregoing, claims 1-60 are all in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (512) 314-0349. Prompt issuance of Notice of Allowance is respectfully requested.

Respectfully submitted,

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